

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UTICA MUTUAL INSURANCE
COMPANY,

Plaintiff,

-v-

6:13-CV-995

CENTURY INDEMNITY COMPANY,
as Successor to CCI Insurance Company,
as Successor to Insurance Company of
North America,

Defendant.

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DAVID N. HURD
United States District Judge

ORDER ON MOTIONS IN LIMINE

A jury trial in this matter is scheduled to begin on Monday, September 16, 2019 at 9:30 a.m. in Utica, New York. The parties have moved *in limine* seeking rulings on the admissibility of certain matters. Dkt. Nos. 549-57, 564, 592, 594-96. Those motions have been fully briefed. Dkt. Nos. 573-92, 603, 606-08.

The standard governing a motion *in limine* is set forth in detail in this Court's recent opinion in *Walker v. Schult*, 365 F. Supp. 3d 266, 274-75 (N.D.N.Y. 2019) and will not be repeated here. Briefly stated, however, "[e]vidence should be excluded on a motion *in limine* only when the evidence is clearly inadmissible on all potential grounds." *Id.* (citation omitted). Accordingly, "[t]he trial judge may reserve judgment on a motion *in limine* until trial to ensure the motion is considered in the proper factual context." *Id.*

Upon review, Century's ninth, eleventh, and twelfth motions *in limine* will be granted because Utica Mutual has not opposed those requests. However, upon review of the parties' other filings in light of the governing standard set forth in *Walker*, several of these motions must be denied without prejudice to renew at an appropriate time during the course of the trial.

Therefore, it is

ORDERED that

1. Century's omnibus motion *in limine* (Dkt. No. 564) is GRANTED in part and DENIED in part;

2. Century's first motion *in limine* to preclude decisions from other actions is GRANTED;

3. Century's second motion *in limine* to preclude mediators' findings from the California Case of *Cannon Electric v. Affiliated FM Ins. Co.* is GRANTED;

4. Century's third motion *in limine* to preclude Utica from offering extrinsic evidence of an unambiguous legal contract is DENIED without prejudice to renew;

5. Century's fourth motion *in limine* to preclude Utica from offering testimony on issues on which it claimed privilege throughout discovery is GRANTED;

6. Century's fifth motion *in limine* to preclude Utica's lawyer fact witnesses from offering opinion testimony or legal opinions is DENIED without prejudice to renew;

7. Century's sixth motion *in limine* to preclude Utica from calling undisclosed lawyer expert witness Stefanie Walterick is DENIED without prejudice to renew;

8. Century's seventh motion *in limine* to preclude certain testimony of lawyer-expert Andrew Maneval is DENIED without prejudice to renew;

9. Century's eighth motion *in limine* to preclude cumulative expert testimony is DENIED without prejudice to renew;

10. Century's ninth motion *in limine* to preclude Utica from offering undisclosed expert opinions is GRANTED;

11. Century's tenth motion *in limine* to preclude Utica from offering testimony about treaty reinsurance that it withheld from discovery is GRANTED;

12. Century's eleventh motion *in limine* to preclude evidence of financial hardship is GRANTED;

13. Century's twelfth motion *in limine* to preclude evidence of charitable giving is GRANTED;

14. Century's thirteenth motion *in limine* to preclude Utica from offering into evidence designated portions of depositions taken in the California Case of *Cannon Electric v.*

Affiliated FM Insurance Co. is GRANTED;

15. Century's motion (Dkt. No. 592) to preclude evidence of litigation reserves is GRANTED;

16. Utica Mutual's (Dkt. No. 549) motion *in limine* No. 1 to preclude certain evidence of disputes with other reinsurers is GRANTED;

17. Utica Mutual's (Dkt. No. 550) motion *in limine* No. 2 to preclude certain evidence of other insurers' interpretations is GRANTED;

18. Utica Mutual's (Dkt. No. 551) motion *in limine* No. 3 to preclude certain references to NICO, Berkshire Hathaway, and Warren Buffet is GRANTED;

19. Utica Mutual's (Dkt. No. 552) motion *in limine* No. 4 to preclude Bernd Heinze from testifying about certain legal issues is DENIED without prejudice to renew;

20. Utica Mutual's (Dkt. No. 553) motion *in limine* No. 5 to preclude evidence about alleged conditions precedent to the 1975 contract is DENIED without prejudice to renew;

21. Utica Mutual's (Dkt. No. 554) motion *in limine* No. 6 to preclude evidence about R&Q's alleged responsibility for the 1975 agreement is GRANTED;

22. Utica Mutual's (Dkt. No. 555) motion *in limine* No. 7 to preclude evidence about whether Utica needed to obtain consent to the defense endorsement is DENIED without prejudice to renew;

23. Utica Mutual's (Dkt. No. 556) motion *in limine* No. 8 to preclude Century from using the phrase "two sets of books" is DENIED without prejudice to renew; and

24. Utica Mutual's (Dkt. No. 557) motion *in limine* No. 9 to preclude evidence about the alleged lack of certain aggregate limits is DENIED without prejudice to renew.

IT IS SO ORDERED.

Dated: September 13, 2019
Utica, New York.



United States District Judge